BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY.

1) Original Application No.473/86.

Shri Suryakant Raghunath Darole,
Beturkar Pada, Yale Nagar,
High Way Road, Municipal Room
No.359, Kalyan, Dist-Thane.

2) Original Application No.474/86.

Shri Dattatraya Sakharam Chaudhary,
Ganesh Nagar, Masobha Maidan
Chawl No.4, Room No.6, Kalyan,
Dist-Thane.

3) Original Application No.475/86.

Shri Vilas Waman Pagare,
Jeet Singh Chawl, Room No.14,
Near Quality Company,
Beturkar Pada, Kalyan,
Dist-Thane.

4) Original Application No.476/86.

Shri Dattatraya Tukaram Bavaskar,
Pankaj Kunj, Rambaug No.4,
New Mandir, New Chikanghar,
Kalyan, Dist-Thane.

5) Original Application No.477/86.

Shri Zaheer Khan Nazir Khan,
M.S.R.B. I/1006, Room No.4,
Waldhuni, Kalyan, Dist-Thane.

6) Original Application No.478/86.

Shri Suresh Undru Mali,
Beturkar Pada, Kanu Patil Chawl,
Kalyan, Dist-Thane.

7) Original Application No.479/86.

Shri Shivaji Narayan Kapse,
Wadeghar, Kapse Chawl,
Tal-Kalyan, Dist- Thane.

8) Original Application No.480/86.

Shri Prakash Sakharam Kamble,
Indira Nagar,Murbad Road,
Kalyan, Dist-Thane.

9) Original Application No.481/86.

Shri Uday Nana Gade,
Sakharam Sodewalla Chawl,
Bhoi Wada, Kalyan, Dist-Thane.

10) Original Application No.482/86.

Shri Waman Tukaram Bavaskar,
Pankaj Kunj, Rambaug No.4,
New Ram Mandir, New Chikanghar,
Kalyan, Dist-Thane. ... Applicants.

V/s.

The Divisional Railway Manager,
Central Railway, Bombay. ... Respondent.

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Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil,
Hon'ble Member(A), Shri L.H.A. Rego.

Appearances:

1. Mr.L.M.Nerlekar, learned advocate for the applicants.
2. Mr.R.K.Shetty, learned counsel for the Respondent.

JUDGMENT:-

(Per Shri B.C.Gadgil, Vice-Chairman) Dated: 14.8.1987.

All these applications can be conveniently decided by a common judgment, as they involve common and similar questions. Each of the applicants was a railway servant viz. casual labourer, popularly known as khalasi. They state that their services were terminated without notice, being the juniormost. It is not in dispute, that the provisions of Section 25F of the Industrial Disputes Act (Act, for short), are applicable. Thus, retrenchment was not permissible unless wages in view of notice period and retrenchment compensation were paid. The grievance of the applicants is that their services have been terminated without payment of wages in view of notice and of retrenchment compensation. The applicants have also contended that in February, 1985 the Railway Administration issued a Circular that there were 300 vacancies of khalasis and that these vacancies were likely to increase upto 500. The applicants therefore, contend that retrenchment on the alleged ground of non-availability of vacancies is bad and that it is also illegal as the provisions of Sec.25F of the Industrial Disputes Act, were not followed.

2. The respondents filed a common reply. In substance, their contention is that it was necessary

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to surrender certain posts and that the applicants being juniormost have been retrenched. It was further contended, that their retrenchment cannot be challenged on the ground of non-compliance of the provisions of Sec.25F of the Act, as according to the respondents these provisions have been complied with.

3. Thus, we have to see whether the provisions of Sec 25F ibid are followed in these cases. Following is a table which would be relevant for deciding this question:

Name of the Applicant and Appln. No.	Dt. of Notice	Date of termination	Dt. when payment was offered to be paid.
(1)	(2)	(3)	(4)
1) Shri S.S.Darole, O.A. No.473/86	25.1.86	26.1.86	27.1.86
2) Shri D.S.Choudhary, O.A. No.474/86	17.12.85	18.12.85	19.12.85
3) Shri V.W.Pagare, O.A. No.475/86	25.1.86	26.1.86	27.1.86
4) Shri D.T.Bavaskar, O.A. No.476/86	21.2.85	22.2.85	-
5) Shri Z.K.Nazir Khan, O.A. No.477/86	17.12.85	18.12.85	19.12.85
6) Shri S.U.Mali, O.A. No.478/86	25.1.86	26.1.86	27.1.86
7) Shri S.N.Kapse, O.A. No.479/86	17.12.85	18.12.85	19.12.85
8) Shri P.S.Kamble, O.A. No.480/86	17.12.85	18.12.85	19.12.85
9) Shri U.N.Gade, O.A. No.481/86	25.1.86	26.1.86	27.1.86
10) Shri W.T.Bavaskar, O.A. No.482/86	.12.85	23.12.85	24.12.85

4. In Application No.473/86, the notice is dated 25.1.1986. The relevant part of the notice

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reads as follows:

> "You being Junior Sub YKCs, your services shall stand terminated w.e.f. 26.1.1986. Your wages in lieu of notice period and retrenchment compensation as per Industrial Dispute Act is being arranged through Station earning Kalyan. You are therefore required to collect all the dues on 27.1.1986".

The notices to other applicants are similarly worded. Hence, it is not necessary to reproduce any part of the notice.

5. Mr. Nerlekar, contended, that the above facts would show, that the wages in lieu of notice period and retrenchment compensation have not been paid or offered to the applicants when they were retrenched. According to him, retrenchment takes effect from various dates as mentioned in the above statement i.e. 18.12.1985, 23.12.1985 and 26.1.1986, and that the above amount was offered to be paid on the succeeding dates i.e., 19.12.1985, 26.12.1985 and 27.1.1986. He submitted that this is not permissible under the provisions of Sec.25F of the Act. As against this, the contention of Mr.Shetty is that an offer to make the payment on a date subsequent to retrenchment would be quite legal and proper.

6. The exact scope of Sec.25F ibid, has been considered by the Supreme Court in a number of cases. In the case of State of Bombay -vs.- Hospital Mazdoor Sabha, reported in AIR 1960 S.C. 610, retrenchment compensation was not paid at the time of retrenchment. Its effect in the background of the provisions of Sec.25F has been considered by the Supreme Court in

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paragraph-6 as follows:

> "On a plain reading of S.25F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. The section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid."

A similar point arose before the Supreme Court in the case of National Iron & Steel Co. -vx.- State of W.B. reported in AIR 1967 S.C.1206. In that case, the services were terminated on 17.11.1958. One month's notice was not given for such termination. Hence it was incumbent upon the employer to pay wages in lieu of notice. The employer was informed that the workman should collect his dues from the Cash Office on 20th November, 1958. The Supreme Court held that this would not be permissible. The relevant observations in paragraph-9 read as follows:-

> "Manifestly, S.25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. ..."

The Supreme Court therefore found, that termination was bad. In 1976, the Supreme Court restated the same principle in the case of State Bank -vs.- N.S.Money, reported in AIR 1976 S.C.1111. The earlier decision in the Hospital Mazdoor Sabha and the principle enunciated therein, has been reproduced in

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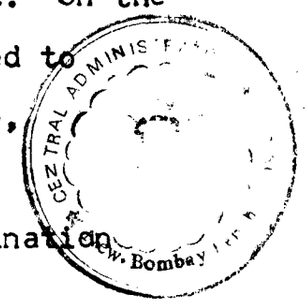
paragraph-8. Thereafter the Supreme Court observed as follows:

> "Without further ado, we reach the conclusion that if the workman swims into the harbour of Sec.25F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Sec.25B(2)..."

We have not underlined the above expression 'at the time the retrenchment', but it has been done in the original judgment itself.

7. It cannot therefore be disputed that the wages in lieu of notice and retrenchment compensation have to be paid at the time of retrenchment and not on any subsequent date. Mr.Nerlekar contended, that as mentioned above, the amount has not been either paid or offered to be paid on the date of retrenchment. On the contrary, each of the applicants has been asked to collect the amount subsequently. He,therefore, contends that there is no compliance with the provisions of Sec.25F and therefore, the termination is bad.



8. In view of this legal position enunciated by the Supreme Court it is not necessary to consider certain other decisions that have been cited before us. However, we would briefly make a mention thereof. The Supreme Court in the case of L.Robert D'Souza v. Executive Engineer, Southern Railway and another reported in 1982(1) Labour Law Journal 330, has considered the question as to what is the meaning of the term "retrenchment". However, that aspect is not relevant in this litigation as there is no dispute

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between the parties that the termination in question was "retrenchment", as contemplated by sec.25F of the Industrial Disputes Act. Shri Nerlekar then relied upon a decision of the Rajasthan High Court in the case of Rajasthan S.R.T. Corpn. v. Judge. Industrial Tribunal reported in 1985 Labour and Industrial Cases 480. In that case, certain employees were retrenched w.e.f. 1.6.1982. At the time of retrenchment, the employer did not tender or pay the amount as contemplated by Sec.25F. However, in the evening at about 6.00 p.m. Demand Drafts were sent by Registered Post to about 20 employees, while on the next date such drafts were sent to others. They were received by the employees later. The Rajasthan High Court has held, that the sending of drafts in such manner would not fulfil the provisions of section 25F ibid as the amount was not tendered at the time of retrenchment. Similar view is taken by the Delhi High Court in the case of Management of M/s.Kanti Weekly v. D.D.Gupta digested in 1984 Labour and Industrial Cases N.O.C. 168. The termination in that case, was on 31.3.1973 or at the latest on 1.4.1973. The cheques for the concerned amount were delivered on 2.4.1973, the Delhi High Court held, that such delivery would not constitute compliance of the provisions of sec.25F ibid. In our opinion, these two decisions have correctly followed the principles laid down by the Supreme Court.

9. Shri Shetty also relied upon certain other decisions. The first case is that of Strawboard Manufacturing Company v. Gobind reported in 1962(1) Labour Law Journal 420. It was a case under sec.33(2)(b)

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of the Industrial Disputes Act which provides that an application has to be made to the Labour Court for approval of termination of service. The proviso to that section contemplates that no workman shall be discharged or dismissed, unless he has been paid wages for one month and an application for approval is made. The Supreme Court has held that the three pre-requisites viz. (i) dismissal or discharge, (ii) payment of wages and (iii) making of an application for approval, must be simultaneous and form part of the same transaction. In the above case, the dismissal order was passed on 1.2.1960 and on that very day, there was an offer to pay the requisite wages to the employee. This apart, the application for approval, was sent by registered post the same day. It was held, that all this would constitute compliance of sec.33(2)(b) and its proviso. Shri Shetty contended, that it would suffice if the above pre-requisites, were complied with, as part of the same transaction and not simultaneously. In our opinion, the Supreme Court has not laid down that simultaneous compliance is not necessary. The decision of the Karnataka High Court in the case of Management of Ramesh Hydromachs v. Labour Court, Hubli and another reported in 1986(1) Labour Law Journal, page.4 is also relied upon by Mr.Shetty, There a retrenchment order was made on 24.1.1979. The amount was kept ready and it was mentioned in the order that the employee should collect the amount in the office and then go home. This offer was refused. The amount was therefore, sent by

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M.O. the next day i.e. on 25.1.1979. It was held, that keeping the money ready and asking the employee to take it would be sufficient tender. This decision however is of no avail, in the present litigation, inasmuch as the amount was not offered to the employees in this litigation on the date of the retrenchment. On the contrary they were informed that they should collect the money on the day following the retrenchment. The last case cited by Mr.Shetty is that of Rajasthan Canal Project v. Rajasthan Canal Rastriya Mazdoor Union reported in 1976(2) Labour Law Journal 25. The employee was retrenched from service by giving a notice on 30.10.1971. The retrenchment was made effective from 30.11.1971. The contention of the employer was, that the bank draft to cover retrenchment compensation was kept ready in the office. However, it could not be delivered or offered to the employee as he was absent in the office. The question arose as to whether merely keeping such bank drafts ready, would constitute offer or payment. The Rajasthan High Court has held that this would not be sufficient that there was non-compliance of sec.25F. It held that the amount may be offered or tendered by a bank draft, but the offer or tender should be in the real sense of the term and that there could not be any offer when the employee was not present in the office on 30.11.1971. In our opinion, this decision does not favour the submission made by Mr.Shetty. Shri Shetty however, drew our attention to paragraph 6 of the judgment where there is a reference to the decision of the Punjab and Haryana High Court.

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The observation therein, is that the employer should have sent the amount in question on the very day of retrenchment if possible, failing which, the next day. This observation would not be relevant unless we take into account the facts of the case. This apart, the above observation is not in keeping with the principles enunciated by the Supreme Court in that it envisages that payment or the offer need not be simultaneous with retrenchment, but could be made on a subsequent date.

10. According to the details furnished in para 3 supra in applications nos. 473, 475, 478 and 481 the employees were retrenched on 26.1.1986 but they were called upon to collect the amount the next day, i.e. on 27.1.1986, as 26.1.1986 being a public holiday it was not feasible for the employer to make the offer on that day. In our opinion, this explanation is not well-founded, as if the employer sought to retrench an employee from a particular day, he was legally bound to make offer or payment on that very day and with this in view he should have taken due precaution to fix the date of retrenchment and arrange for payment of the amount in question on that day. If however the employee declined the amount it could have been sent to him by money order to prove the bona fides. It is thus apparent that the provisions of Section 25F have not been complied with, in the applications in question. In Original Application Nos. 474/86, 477/86, 479/86 and 480/86 retrenchment was effected on 18.12.1985,

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while the employee was asked to collect the amount the next day i.e. on 19.12.1985. In Original Application No.482/86 retrenchment took place on 23.12.1985, while the employee was asked to collect the amount the next day i.e. on 24.12.1985. It is not contended before us by Mr.Shetty that 18.12.1985 and 23.12.1985 were holidays. In fact as discussed above it is not relevant whether the above dates were public holidays or not. Thus in all these matters it is clear that the provisions of sec.25F were not complied with and therefore the retrenchment orders were bad.

11. The position however would be different as far as Original Application No.476/86 is concerned. In that case, retrenchment was effected on 22.2.1985 and we are told that the amount was offered to the employee on that very day but he had refused the same. Retrenchment in this case therefore was in order.

12. The only question that now remains to be decided/is as to whether there should be an order of reinstatement or whether an order for compensation would suffice. Mr.Shetty relied upon the decision of the Madras High Court in the case of Management of Coimbatore Pioneer B.Mills v. Presiding Officer, Labour Court, Coimbatore and others reported in 1979(1) Labour Law Journal 41. It was a case where the order of retrenchment was found to be bad for non-compliance of the provisions of sec.25F. The Labour Court did not however order reinstatement but awarded certain compensation to the employees. This order of the Labour Court has been confirmed by the High Court,

/in the matters (except O.A. No.476/86)

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which held that the Labour Court had a discretion either to order reinstatement or to pay compensation in lieu thereof. Shri Shetty contended, that the retrenchment orders were issued on account of surrender of posts and therefore these were not fit cases where the employees should be reinstated. Mr.Nerlekar however, relied upon the decision of the Supreme Court in the case of Shri Sant Raj and another v. Shri O.P. Singla and another reported in 1985(2) LLJ page.19. There also the Labour Court found that retrenchment was bad as the provisions of sec.25F were violated. However, that Court awarded compensation instead of reinstating the employees on the grounds that retrenchment was bona fide and in accordance with service rules. The Supreme Court however held, that exercise of discretion in this manner refusing reinstatement was erroneous. The relevant head note reads as follows:

> "Ordinarily where the termination of service is found to be bad and illegal in the field of industrial relations a declaration follows that the workman continues to be in service and has to be reinstated in service with full back wages .... The reason given by the Labour Court for granting compensation in lieu of reinstatement viz. that the termination of service of the workman was according to service rules and was bona fide eventhough the said termination was in contravention of S.25F of the Industrial Disputes Act and therefore termination is not illegal and invalid. There is thus an error apparent on the face of the record. Hence, the discretion was exercised on the irrelevant and extraneous consideration not germane to the determination".

13. In our opinion, there are no special facts or circumstances to warrant deviation from the ordinary rule, that the reinstatement with full back wages must

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follow, when the impugned orders are bad as violating the provisions of S.25F. The result therefore is, that all applications except Original Application No.476/86 succeed and Application No.476/86 is liable to be dismissed. Hence we pass the following orders:

ORDER

(1) Original Applications Nos.473, 474, 475, 477, 478, 479, 480, 481 and 482/86 are allowed. The impugned order of retrenchment passed by the Respondents against each of these applicants is quashed and set aside. It is declared, that each of the applicants continue in service of the Railway Administration and the Respondents are directed to reinstate each of them with full back wages and necessary perquisites as are permissible under the rules for the relevant period viz. from the date of retrenchment till reinstatement. These order should be complied forthwith. Parties to bear their own costs.

(2) Original Application No.476/86 is dismissed. Parties to bear their own costs.

(3) This judgment should be placed in Original Application No.473/86 and a copy thereof kept in the record of the remaining applications.

CENTRAL ADMINISTRATIVE TRIBUNAL New Bombay Bench

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